

New Jersey State Tax news

Volume 35, Number 2
Summer 2006

A Quarterly Newsletter

ISSN 1073-6808



inside

<i>budget legislation</i>	1
<i>nj estate tax return preparation</i>	3
<i>interest rate 10.00%</i>	4
<i>PAMS: building the future</i>	4
<i>tax assessor certificates</i>	5
<i>tax assessors' calendar</i>	5
<i>streamlined sales tax</i>	6
<i>criminal enforcement</i>	6
<i>enforcement summary stats</i>	7
<i>tax briefs</i>	9
<i>current amnesty programs</i>	9
<i>in our courts</i>	11
<i>tax calendar</i>	14
<i>important phone numbers</i>	14

FY 2007 Budget Legislation

The following is a list of several recently enacted tax laws related to the fiscal year 2007 budget. For a complete list of budget-related legislation visit the Division's Web site at: www.state.nj.us/treasury/taxation/statebudgetbills.htm

Sales and Use Tax

P.L. 2006, c.44, increased the New Jersey sales and use tax rate from 6% to 7%. The rate change affects all retail sales of taxable merchandise or services that take place on and after July 15, 2006. View the law at: www.njleg.state.nj.us/2006/Bills/AL06/44 .PDF

Additional provisions effective October 1, 2006, extend the sales and use tax to new services, limit some existing exclusions and exemptions, and encompass product categories that have come into being with new technologies.

Effective July 15, 2006

- The New Jersey sales and use tax rate increased to 7%.
- Businesses in Urban Enterprise Zones and Salem county businesses that are authorized to charge the 50% reduced rate are required to charge and collect sales tax at the rate of 3.5% on all qualified taxable sales.
- The combined rate for sales subject to both the New Jersey sales and use tax and the Atlantic City

luxury tax increased from 12% to 13%.

- Businesses in Wildwood, North Wildwood, and Wildwood Crest that are subject to the tourism sales tax must collect 9% tax on tourism-related sales (2% tourism tax and 7% sales tax). This is in addition to the 1.85% tourism assessment and the 3.15% State occupancy fee on hotel occupancies.

The new sales tax rate schedules effective July 15, 2006, are available on the Division's Web site at: www.state.nj.us/treasury/taxation/salestaxrates.htm

For more information on the rate increase visit: www.state.nj.us/treasury/taxation/vendors.htm

Effective October 1, 2006

The law extends sales and use tax to charges for the following property and services, including the new category "digital property":

- Magazines and periodicals, except those sold by subscription and membership periodicals;
- Space for storage (For more information visit: www.state.nj.us/treasury/taxation/spstorage.htm);
- Tanning services;
- Massage services, unless prescribed by a doctor;
- Tattooing, including permanent body art and permanent cosmetic makeup;

continued on page 2

budget legislation - from page 1

- Investigation and security services (For more information visit: www.state.nj.us/treasury/taxation/investsecserv.htm);
- Information services;
- Limousine services originating in this State, except as provided in connection with funeral services;
- Membership fees (For more information visit: www.state.nj.us/treasury/taxation/membership.htm);
- Parking, storing, or garaging a motor vehicle (other than residential parking, certain employee parking, municipal metered parking, and parking subject to municipal parking taxes.); and
- "Digital property," which means electronically delivered music, ring tones, movies, books, audio and video works, and similar products where the customer is granted a right or license to use, retain, or make a copy of such items.

The law changes the taxability of certain property and services as follows:

- **Software.** The current exemption for prewritten software delivered electronically is limited to electronically delivered software that is used directly and exclusively in the conduct of the purchaser's business, trade, or occupation.
- **Delivery Charges.** The law modifies the exemption for delivery charges that are separately stated from the purchase price of an item on the invoice, bill, or similar document given to the purchaser. Delivery charges on taxable items are now taxable, and delivery charges on nontaxable items like clothing are exempt.

- **Laundrying.** The sales tax exemption for laundrying, dry cleaning, tailoring, weaving, and pressing is limited specifically to providing those services to clothing. The exemption does not apply to items such as drapery, carpets, blankets, slipcovers, and bed or hospital linens.
- **Floor Covering Installation Services.** The exemption for the installation of floor covering that resulted in capital improvement to real property is eliminated. Thus, the labor charge to install floor covering (e.g., carpeting, linoleum, tile, and padding) is now taxable. For more information, visit: www.state.nj.us/treasury/taxation/floorservices.htm
- **Landscaping Services.** The exemption for landscaping services that resulted in a capital improvement to land is eliminated. Labor charges for landscaping services, such as seeding, sodding or grass plugging of new lawns; planting trees, shrubs, hedges, plants; and clearing and filling land are now taxable. For more information visit: www.state.nj.us/treasury/taxation/landscape.htm

For more information on changes effective October 1, 2006, visit the Division's Web site at: www.state.nj.us/treasury/taxation/salestaxbase.htm

Urban Enterprise Zones

P.L. 2006, c.34, amends the Urban Enterprise Zones Act which provides an exemption for certain sales made to a qualified urban enterprise zone business. The purchase exemption remains effective; however, procedural amendments to the law now require the sales tax to be

continued on page 3

New Jersey State Tax **news**

is published quarterly by the:

**New Jersey Division of Taxation
Technical Services
Information & Publications Branch
PO Box 281
Trenton, NJ 08695-0281**

The *State Tax News* is published on the Division of Taxation's Web site at:

www.state.nj.us/treasury/taxation/publnews.htm

Subscribe to *NJ Tax E-News* on our Web site to be notified when new issues become available.

This publication is designed to keep taxpayers, tax practitioners, and the general public informed of developments, problems, questions, and matters of general interest concerning New Jersey tax law, policy, and procedure. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for New Jersey tax laws and/or regulations.

Division of Taxation Acting Director:

Dr. Carol O'Cleireacain

Acting Deputy Director:

Maureen Adams

News Coordinators for This Issue:

<i>Compliance</i>	Marita Sciarrotta
<i>Crim. Investigation</i>	Richard Mawer
<i>Property Admin.</i>	Holly Reinson
<i>Technical Services</i>	Beth Chambers
<i>Legislation</i>	Geoffrey Marsh

Contributors: Carol E. Bell, Beth A. Berniker, William G. Bittner, Toni Bushelli, Barry Fulmer, Denise M. Lambert, Dana Max, Suzanne Miller, Patrick J. Ryan, Carol M. Trovato, and Fred M. Wagner.

Staff: J. Donald Byrnes, Lauren D. Higgins, Maria E. Likakis, Terry A. McWilliams, Sara E. Murphey, Kelly J. Warboys.

Editor: Sheri B. Silverstein



budget legislation - from page 2

collected on sales made to qualified businesses on and after July 15, 2006, unless the business is a "qualified small business" (annual gross receipts less than \$1 million in the prior annual tax period). For this purpose, a business may use its gross receipts from sales as reported for sales tax in the prior year. A qualified business other than a small qualified business must pay the tax and apply for a refund. For more information visit the Division's Web site at: www.state.nj.us/treasury/taxation/uez.htm. To view the law visit: www.njleg.state.nj.us/2006/Bills/AL06/34 .PDF

Tobacco Taxes

Cigarette Tax. P.L. 2006, c.37, increased the cigarette tax, effective July 15, 2006. The rate increase is \$0.175 cents per pack for a total of \$2.575 per pack of 20 cigarettes. Previously, the tax was \$2.40 per pack.

Tobacco Products Wholesale Sales Tax. P.L. 2006, c.37, was also amended to impose a separate tax, effective August 1, 2006, upon the sale, use, or distribution of moist snuff at the rate of \$0.75 per ounce on the net weight, as listed by the manufacturer of the moist snuff, and a proportionate rate on all fractional parts of an ounce of the net weight of moist snuff.

The \$0.75 per ounce tax on the net weight of moist tobacco is to be paid and collected in a manner similar to the 30% tobacco products wholesale tax on other tobacco products and is simply a change in amount of tax assessed from a tax based on price to a tax based on weight. View the law at: www.njleg.state.nj.us/2006/Bills/AL06/37 .PDF

Corporation Business Tax

P.L. 2006, c.38, imposes a 4% surtax in addition to the annual corporation franchise tax. For privilege periods ending on or after July 1, 2006, but before July 1, 2009, each taxpayer shall be assessed and must pay a surtax equal to 4% of the amount of tax liability remaining after applying credits against liability, other than credits for installment payments, estimated payments made with a request for extension to file a return, or overpayments from a prior privilege period. Payments of the surtax are to be made annually as required under N.J.S.A. 54:10A-15. No credits shall be allowed against the surtax liability except for credits for installment payments, estimated payments made with a request for an extension of time for filing a return, or overpayments from prior privilege periods.

The law also makes adjustments to the New Jersey minimum tax under the Corporation Business Tax Act. For calendar years beginning in 2006 and thereafter. View the law at: www.njleg.state.nj.us/2006/Bills/AL06/38 .PDF

Domestic Security Fee

P.L. 2006, c.42, amends P.L. 2003, c.34, by providing for an increase in the daily rental fee imposed on motor vehicle rental companies from \$2 to \$5 for each day or part thereof that a motor vehicle is rented under rental agreements of not more than 28 days. The increased fee must be separately stated on the agreement and applies with respect to certain motor vehicle rental agreements in New Jersey entered into on or after July 8, 2006. The fee is separate from, and in addition to, any sales tax imposed on the cost of the rental transaction and is not to be included

in the receipts subject to sales tax liability. View the law at: www.njleg.state.nj.us/2006/Bills/AL06/42 .PDF

Fur Clothing Retail Gross Receipts Tax and Use Tax

P.L. 2006, c.41, enacted July 8, 2006, and effective July 15, 2006, imposes a gross receipts tax at the rate of 6% on the retail sale of fur clothing in this State and a use tax on the use of certain fur clothing in this State for which a tax has not been paid. For more information visit the Division's Web site at: www.state.nj.us/treasury/taxation/pdf/furclothingusetax.pdf. To view the law visit: www.njleg.state.nj.us/2006/Bills/AL06/41 .PDF

Realty Transfer Fee

P.L. 2006, c.33, enacted July 8, 2006, and effective August 1, 2006, and applying to transfers of property on or after that date, imposes a 1% fee, or 1% tax, on certain purchasers of certain commercial property for over \$1 million. For more information visit the Division's Web site at: www.state.nj.us/treasury/taxation/pdf/granteefeenotice.pdf. To view the law visit: www.njleg.state.nj.us/2006/Bills/AL06/33 .PDF □

INHERITANCE/ESTATE TAX NJ Estate Tax Return Preparation

On July 1, 2002, the New Jersey estate tax was decoupled from the Federal estate tax. The revised statute provides that the New Jersey estate tax is either the amount of the maximum credit for state death taxes

continued on page 4



estate tax return - from page 3

allowable under the provisions of the Internal Revenue Code in effect on December 31, 2001, or an amount determined pursuant to a simplified tax system prescribed by the Director.

Estate representatives may, at their election, use either the Form 706 method or the Simplified Form method to determine an estate's New Jersey estate tax liability. The Form 706 method is based on the provisions of the Internal Revenue Code in effect on December 31, 2001. The Simplified Form method is based on the net estate as determined for New Jersey inheritance tax purposes with certain changes.

The New Jersey Supreme Court's Committee on the Unauthorized Practice of Law concluded in Opinion No. 10 that the preparation of a New Jersey inheritance tax return requires the application of a gamut of technical legal principles and therefore its preparation by a non-

lawyer acting for another would constitute the unauthorized practice of law. The New Jersey Supreme Court opinion *In the Matter of the Application of the New Jersey Society of Certified Public Accountants*, 102 N.J. 231 (1986), modified Opinion No. 10 to permit the preparation and filing of New Jersey inheritance tax returns by qualified certified public accountants licensed in New Jersey.

Under the provisions of prior law the Division permitted the preparation of New Jersey estate tax returns by individuals who were not licensed New Jersey attorneys or certified public accountants. The rationale behind this policy was that the preparation of the New Jersey estate tax return did not involve the practice of law as the tax was a sponge tax based solely upon the credit for state death taxes allowable in the Federal estate tax proceeding. The preparation of the New Jersey estate tax return involved nothing more than copying numbers from the Federal estate tax return filed with the Internal Revenue Service to the New Jersey estate tax return.

Since the New Jersey estate tax is no longer dependent upon a Federal determination and is now a stand-alone tax, the preparation of the estate tax return requires knowledge of technical legal principles similar to that referenced in Opinion No. 10. Therefore, the Division requires that the New Jersey estate tax return be prepared and filed either by the estate representative or his/her New Jersey licensed attorney or certified public accountant. □

LOCAL PROPERTY TAX

PAMS: Building the Future

The PAMS (Property Assessment Management System) project recently completed a series of presentations to county tax boards, the League of Municipalities, and tax collector and assessor associations. Representatives from Property Administration and the Division of Local Government Services discussed the status of the PAMS project, gave a preview of what to expect with the new system, and answered questions.

The presentations were made to counties throughout the State, including the early implementation counties of Salem, Camden, and Hunterdon, from January through April. Stephen Sylvester, Assistant Director of Property Administration, was pleased with the participation. "We are very encouraged to see the interaction occurring between the State, county, and local government in the development of PAMS, and we are further encouraged by the dialogue these presentations generate. This makes us very confident that we will end up with a state-of-the-art system that meets the needs of all stakeholders," said Sylvester.

Another round of presentations is being planned for fall of 2006. In addition, the PAMS information booth will be on display at conferences to be held by the Tax Collectors and Treasurers Association of New Jersey, the Association of Municipal Assessors of New Jersey, and the New Jersey Association of County Tax Boards this spring and summer.

Interest 10.00%

The interest rate assessed on amounts due for the period January 1, 2006 – December 31, 2006, will be 10.00%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
10/1/01	9.00%
1/1/02	8.00%
1/1/03	7.25%
1/1/04	7.00%
1/1/05	8.00%
10/1/05	9.50%
1/1/06	10.00%

continued on page 5



PAMS: building the future - from page 4

This article appears in the most recent edition of the PAMS newsletter. To see the entire issue, visit the Division's Web site at: www.state.nj.us/treasury/taxation/pamsvol/infolinks.htm □

LOCAL PROPERTY TAX Tax Assessor Certificates

The Tax Assessor Examination is held in accordance with the Assessor Certification and Tenure Act, requiring anyone taking office as a tax assessor after July 1, 1971, to hold a tax assessor certificate.

Nineteen persons passed the March 25, 2006, C.T.A. exam. Fourteen persons received Tax Assessor Certificates dated July 1, 2006. They are:

Burlington County: Ruth A. Benz, Cinnaminson Township; Barbara A. Manzi, Springfield Township; Anthony D. Porto II, Hainesport Township.

Camden County: Melissa Mallory, Camden City; Joseph P. Pizzoli, Lindenwold Borough.

Monmouth County: Renee Frotton, Atlantic Highlands Borough; Andrew Gambardella II, Marlboro Township; James F. Ryan, Howell Township.

Morris County: Joanna C. Aceto, Morris Township.

Passaic County: Michael P. Soccol, Clifton City.

Somerset County: William A. Radano, Bridgewater Township; Margaret C. Wilson, Somerville Borough.

Union County: Deborah S. Bringuier, Union Township.

Commonwealth of Pennsylvania: Irvin M. Sibert, Washington County, West Finley Township.

The certification examination is offered twice a year, in March and September. The next examination is scheduled for September 30, 2006. The deadline to file applications for this exam was August 31, 2006. The filing fee is \$10. If you have any questions regarding this exam, please contact Mary Ann Miller at 609-292-7813 or write to Property Administration, PO Box 251, Trenton, NJ 08695-0251. □

LOCAL PROPERTY TAX Tax Assessors' Calendar

July 1–

- Where County Board of Taxation cannot hear and determine all appeals within the prescribed time, Board may apply to Director, Division of Taxation for extension of time within which appeals may be heard and determined.

- Disallowed property tax deduction recipients, granted an extension, required to pay deduction previously granted. If unpaid, become real property liens.

- MOD IV Master file sent to Property Administration via appropriate medium.

- Assessor to mail Application for Farmland Assessment (Form FA-1) for tax year 2007 together with a notice that the completed form must be filed with the assessor by August 1, 2006, in order

to claim continuance of Farmland Assessment.

2nd Tuesday in July–

- State Equalization Table prepared.

August 1–

- Owners of farmland must file Application for Farmland Assessment (Form FA-1) with the assessor to have land assessed under Farmland Assessment Act for tax year 2007.

August 5–

- All SR-1A forms showing information to be used in compiling 2006 Table of Equalized Valuations for State School Aid to be received by Property Administration.

August 15–

- County Board of Taxation Presidents to annually file a report (Form TAS) that contains appeal information and statistics to the Director, Division of Taxation.

August 25–

- Completion of State Equalization Table by Director, Division of Taxation.

September 1–

- Extension to file Application for Farmland Assessment (Form FA-1) where assessor has determined failure to file by August 1 was due to illness of the owner or death of the owner or a member of the owner's immediate family.
- Local exchange telephone, telegraph, and messenger system companies file tangible business personal property returns (Form PT-10) with respect to tax year 2007 with the assessor for taxing

continued on page 6



assessors' calendar - from page 5

district in which the said property is located.

- Petroleum refineries file tangible business personal property returns (Form PT-10.1) with assessor for tax year 2007, for machinery, apparatus, or equipment directly used to

manufacture petroleum products from crude oil.

September 13-

- County Tax Board transmits Table of Aggregates to County Treasurer who then transmits to Taxation and Local Government Services Directors, State Auditor, Municipal Clerks, and Clerk of Board of Freeholders. □

Streamlined Sales and Use Tax Legislative Changes

P.L. 2005, c.126, effective October 1, 2005, conformed the New Jersey Sales and Use Tax Act to the Streamlined Sales and Use Tax Agreement. The legislation affects the administration of New Jersey's sales and use tax in a number of areas. More information is available at:

[Streamlined Sales and Use Tax Agreement Uniform Exemption Certificate](#) and [Instructions](#)

[Notice: NJ Sales Tax Exemption for Drugs and Medical Equipment](#)

[Streamlined Sales and Use Tax Law: Motor Vehicle Leasing Issues](#)

[Notice: Rental of Equipment With An Operator](#)

[Summary of Changes in Tax Base for Motor Vehicle Lease Transactions](#)

[Notice: Sales And Use Tax Exemption for Clothing](#)

[Notice: New Jersey Enacts Streamlined Sales and Use Tax Agreement Legislation](#)

[Notice: Changes in the Sales and Use Tax Act Affecting the Sales of Food and Food Products](#)

[Notice on Leases and Rentals of Tangible Personal Property](#)

[Notice to the Direct Mail Industry](#)

[Notice to Retailers of Fur Clothing](#)

[SSTA DRAFT Proposed New Rules: N.J.A.C. 18:XX](#)

[Certificate of Mailing and Service](#)

[Streamlined Sales and Use Tax Agreement Response Letter](#)

[Streamlined Sales Tax Petition](#)

[Streamlined Sales and Use Tax Registration, Amnesty, and Program Information](#)

If you have questions concerning the streamlined sales and use tax legislation, [e-mail](mailto:nj.streamlined@treas.state.nj.us) us at: nj.streamlined@treas.state.nj.us

Criminal Enforcement

Criminal Enforcement over the past several months included:

- On December 29, 2005, in Middletown Twp. Municipal Court, the Office of Criminal Investigation (OCI) charged Kasot, Inc., t/a Atlantic Highlands Nursing Home, with recklessly or negligently failing to pay the New Jersey cigarette tax due on 5,618 cartons of untaxed cigarettes that the nursing home administration had purchased over the Internet for distribution to the residents of the facility. This case was the result of a referral from the Division's Field Audit Branch, which had uncovered the violations in the course of a routine audit.

- On January 4, 2006, in Jersey City, Lan Fan Zhang, 42, and Min Liang Yu, 20, both of New York City, were indicted by a Hudson County Grand Jury on charges of possession of untaxed cigarettes, possession of items bearing a counterfeit trademark, engaging in conduct without a required license with intent to evade tax, failing to file returns with intent to evade tax, failing to pay tax with intent to evade, and failing to maintain required books and records with intent to evade tax. The indictment is the result of the arrest of Zhang and Yu by OCI on April 7, 2004, in possession of 14,757 cartons of untaxed cigarettes in counterfeit Newport packaging, with a retail value of \$856,053, which they were loading into a van from a storage

continued on page 7



criminal enforcement - from page 6

container at the U-Store-It self-storage facility in Jersey City. This seizure averted a loss of \$353,881 in cigarette tax and sales and use tax. The case was presented to the grand jury by the Hudson County Prosecutor's Office.

- On January 6, 2006, in Camden, OCI, assisted by Camden Police, arrested Jun Pan, 35, of Camden, in possession of 64 cartons of untaxed cigarettes shipped via U.S. mail from an Indian reservation. The investigation is continuing.
- On January 6, 2006, in Pine Hill Municipal Court, Joseph Friedman and Sons of NJ, Inc., a cigarette wholesaler in Pennsauken, was charged with offering and giving rebates in connection with the sale of cigarettes between January 1 and June 30, 2005.
- On January 20, 2006, in Superior Court – Monmouth County, Michael J. Buonopane, 45, of Rumson, was sentenced to four years' imprisonment. He was immediately taken into custody for transfer to State prison. This is the largest criminal tax case ever prosecuted in State history. He had pled guilty on June 3, 2005,

to misapplication of a total of \$4,848,815 in taxes between 1999 and 2004 (\$2,014,386 in sales and use tax, \$106,012 in gross income tax, \$654,055 in unemployment and disability contributions, and \$2,074,362 in Federal withholdings) at 20 Mr. Good Lubes and Country Sudser Car Washes in Monmouth, Ocean, Middlesex, Union, Essex, and Morris counties. He has paid the Division restitution of \$2,120,398 in taxes and must pay \$772,120 in penalties and interest within three years. He was also ordered to surrender his license to practice law and his CPA license. This was a joint investigation by OCI, the New Jersey Division of Criminal Justice, and the New Jersey Department of Labor and Workforce Development, and was prosecuted by the State Office of the Attorney General.

- On January 26, 2006, in Trenton, Tormu E. Prall, 33, of Trenton, was arrested by OCI on a warrant which charged him with possession and sale of 70 cartons of untaxed cigarettes on September 2, 2005. At the time of his arrest, Prall was in possession of an additional 37 cartons of untaxed cigarettes. Search warrants were

then executed on Prall's house and two cars resulting in the seizure of an additional 140 cartons of untaxed cigarettes, \$3,300 in cash, several hundred DVDs, CDs, video games, computer hard drives, CD/DVD burners, a large quantity of blank CDs and DVDs, and a 1995 Lexus. Prall was also charged with failure to maintain records with intent to evade tax, failure to pay cigarette tax, failure to file cigarette tax returns, possession of 100 or more cartons of untaxed cigarettes, and possession of sound/video recordings with fraudulent manufacturer/performer names with intent to sell. Prall was held at the Mercer County Correction Center in lieu of \$75,000 bail. This was a joint investigation by OCI and the Mercer County Prosecutor's Office, with assistance from the Trenton Police Department, begun by OCI in response to numerous complaints from the Trenton Downtown Association concerning sale of untaxed cigarettes on street corners and at bus stops.

- On February 8, 2006, in Vineland, OCI disrupted the distribution network of a counterfeit

continued on page 8

Enforcement Summary Statistics First Quarter 2006

Following is a summary of enforcement actions for the quarter ending March 31, 2006.

• Certificates of Debt:		• Jeopardy Seizures	0
Total Number	3,329	• Seizures	82
Total Amount	\$31,172,205	• Auctions	8
• Jeopardy Assessments	169	• Referrals to the Attorney General's Office	1,036

For more detailed enforcement information, visit our Web site at:

www.state.nj.us/treasury/taxation/jdgdisc.htm

criminal enforcement - from pg. 7

cigarette tax stamp operation by arresting Loan Nguyen, 56, of Falls Church, Virginia, in possession of 81.8 cartons of cigarettes bearing counterfeit New Jersey cigarette tax stamps that she was attempting to sell. Nguyen was charged with sale of untaxed cigarettes, possession of untaxed cigarettes, possession of 10 or more cartons of cigarettes with counterfeit tax stamps, transportation of untaxed cigarettes, failure to file returns with intent to evade, failure to pay tax with intent to evade, and engaging in conduct without required registration or license with intent to evade. A 2005 Chrysler Town and Country van was also seized. Nguyen was held in lieu of \$25,000 bail.

- On February 23, 2006, in Pennsville, OCI and the Pennsville Police arrested Sukhdev S. Jaswal, 46, of Salem, New Jersey, at his sole proprietorship, Rachel's Market, following undercover purchases of untaxed cigarettes and inspections of the market and a Riggins gas station he owns in Quinton Township. Seized were 19.2 cartons of untaxed cigarettes and about 500 untaxed cigars. Jaswal was charged with sale of untaxed cigarettes, failure to pay cigarette tax, failure to maintain books and records, and possession of untaxed goods.
- On March 3, 2006, in Trenton, OCI agents, assisted by the Trenton Police, arrested Willie Howlen, 35, of Morrisville, Pennsylvania, in possession of untaxed cigarettes he was attempting to

sell on the street. Seized were 22.8 cartons of Newport cigarettes with no tax stamps, a 2000 Land Rover registered to Howlen and used to transport the cigarettes, numerous bootleg DVDs Howlen was attempting to sell, and \$507 cash. Howlen was charged with sale of untaxed cigarettes, possession of untaxed cigarettes, and transportation of untaxed cigarettes. Additional charges are pending.

- On March 7, 2006, in Dover Township, OCI and Dover Township Police arrested Richard Carroll, 49, of Brick, New Jersey, at his sole proprietorship, Towne Stationery, after an investigation and inspection established that Carroll was engaged in the sale of untaxed cigarettes. Seized were 39.1 cartons of untaxed cigarettes found in a locked, hidden compartment under the store counter and secreted in a wall of the store's bathroom, and \$1,221 currency, including \$1,150 found in the hidden compartment with the untaxed cigarettes. Carroll was charged with sale of untaxed cigarettes and possession of untaxed cigarettes. Carroll was awaiting sentencing on previous charges of sale of untaxed cigarettes and failure to maintain books and records with intent to evade payment of \$12,342.60 in sales tax, and has a record of two earlier tax offenses.
- On March 7, 2006, beginning in Carney's Point, OCI, New Jersey State Police, and the U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) conducted a continuous 22-hour joint investigation and mobile surveillance

resulting in the arrest of Abel Concepcion, 33, of Miami, Florida, and seizure of 48,000 cartons of stolen, untaxed cigarettes which he was transporting in a tractor-trailer. The street value of the seized cigarettes is \$2,986,560. This seizure averted a cigarette tax and sales and use tax loss of \$1,320,960. Concepcion was charged with failure to maintain records with intent to evade, possession of 100 or more cartons of untaxed cigarettes, dealing with unlicensed persons, engaging in conduct requiring registration or licensure without same, and transportation of untaxed cigarettes. He was subsequently turned over to ATF and charged with Federal offenses relating to possession and transportation of the cigarettes, which had been stolen in-transit in North Carolina.

- On March 15, 2006, a Monmouth County Grand Jury returned a five-count indictment against Joan and Richard Orlando, Dover Twp., charging them with conspiracy, failure to pay New Jersey gross income tax, and theft-related crimes. Joan Orlando, 60, had been the bookkeeper of St. Benedict's Church in Holmdel since 1998. The allegations are that Ms. Orlando submitted grossly inflated salary figures for herself to Automatic Data Processing, Inc. (ADP), a payroll processing company, from 2001 to June 2005. Through this scheme Orlando received over \$800,000 in excess salary. To conceal the theft Ms. Orlando altered tax records that ADP forwarded to St. Benedict's. Ms. Orlando was charged by the

continued on page 9

criminal enforcement - from page 8

grand jury with theft by deception and two counts of failure to pay tax with intent to evade. Richard Orlando, also 60, received nearly \$300,000 in cash and checks from his wife's bank account between January 2003 and June 2005. These payments of monies misappropriated by Joan Orlando are the basis for the second-degree conspiracy and receiving stolen property charges. This investigation was jointly conducted by OCI, the Monmouth County Prosecutor's Office, and the Holmdel and Dover Township Police Departments.

- One hundred twenty-six (126) complaints alleging tax evasion were evaluated from January through March 2006, in the Office of Criminal Investigation.
- During the same period, one hundred eight (108) charges were filed in court and fourteen (14) arrests were made in twenty-five (25) cases involving violations of the Cigarette Tax Act. Seized were 48,546.2 cartons of untaxed cigarettes, having a total value of \$3,020,544.56 and including 156.4 cartons bearing counterfeit New Jersey tax revenue stamps.

□

Tax Briefs

Corporation Business Tax IRC §1033 Involuntary Conversion of Business Assets

— The term “entire net income” refers to the corporation's total net income from all sources, whether inside or outside New Jersey and includes any gain derived from the employment of capital and/or labor and profit gained through the sale or conversion of capital assets. A corporation's Federal taxable income, before net operating losses and other special deductions and subject to certain modifications, is deemed to be, *prima facie*, the taxpayer's entire net income for corporation business tax purposes. N.J.S.A. 54:10-4(k); N.J.A.C. 18:7-5.1(a); N.J.A.C. 18:7-5.2.

Items reported above Line 28 on Schedule A of Form CBT-100 must be the same as those reported to the IRS for Federal income tax purposes. There is no adjustment required by New Jersey for IRC Section 1033 involuntary conversion of business assets. Therefore, to the extent that a gain resulting from an IRC Section 1033 involuntary conversion is recognized for Federal purposes, such a gain will be recognized for New Jersey purposes.

Gross Income Tax

Credit for Taxes Paid to Other Jurisdictions Clarified —

Taxpayers are often confused about how to calculate the credit for taxes paid to other jurisdictions in situations where there is income reported to another jurisdiction (e.g., a state) and its political subdivision (e.g., a city). Detailed information and examples illustrating the calculation of the credit are provided in N.J.A.C. 18:35-4.1(a)11, Tax Topic Bulletins GIT-3W and GIT-3B, and *Jenkins v. Director*, 4 N.J. Tax 127 (1982).

N.J.A.C. 18:35-4.1(a)11 states, “A New Jersey resident taxpayer in determining the resident credit allowed, as defined in this section, shall not combine in the numerator (Schedule A, Line 1, N.J. 1040) the same income subject to tax by the jurisdiction and/or political subdivision. The amount of income or wage tax during the tax year shown on Schedule A, Box B, N.J. 1040 for the taxpayer paying both a tax to another state and to a political subdivision of such state would be the total amount of state income tax and income tax or wage tax paid to the other state and political subdivision of such state where the same amount of income is subject to tax in both the other state and political subdivision of such state.”

If the income taxed by the political subdivision is more than the income taxed by the other state, then a separate Schedule A must be completed to calculate the additional credit for taxes paid to the political subdivision. For example, a taxpayer earned \$95,000 of wages in City A located in State B. If State B taxed \$90,000, and City A imposed tax on \$95,000,

Current Amnesty Programs

Rhode Island is conducting a tax amnesty program. During the designated amnesty period, taxpayers have a chance to pay back taxes with reduced (or eliminated) penalty and/or interest. For more information, including eligibility requirements, or to obtain an application, visit the Web site listed below.

RI Jul 15 – Sep 30 <http://www.tax.ri.gov/amnesty/>

continued on page 10

tax briefs - from page 9

the taxpayer may claim an additional credit based on the \$5,000 of income that was taxed by City A but not by State B.

Please keep in mind when calculating the potential credit for taxes paid to another state and its political subdivision that the limitations of a credit for taxes paid to another jurisdiction as noted in N.J.S.A. 54A:4-1 and N.J.A.C. 18:35-4.1 still apply. That is to say, the total income from all jurisdictions in which the taxpayer may be seeking a credit may not be in excess of the income taxed by New Jersey. For detailed examples of how to calculate the credit when the same income is taxed by more than one jurisdiction outside New Jersey, refer to Tax Topic Bulletins GIT-3W, *Credit for Taxes Paid to Other Jurisdictions (Wage Income)*, and GIT-3B, *Credit for Taxes Paid to Other Jurisdictions (Business/Nonwage Income)*.

LLC Electing Disregarded Entity Status — New Jersey filing requirements for a limited liability company (LLC) depend on Federal tax treatment. The entity is treated the same for State purposes as it is for Federal purposes. If a single-member LLC elects “disregarded entity status,” the LLC is treated as a sole proprietorship rather than as a corporation, and income from the LLC must be reported on Form NJ-1040.

Realty Transfer Fee

Senior Citizen Partial Exemption

— An inquiry was received regarding whether a senior citizen occupying a home to which she had conveyed title from herself as an individual to a trust in her name, can now, when selling the property,

receive the senior citizen’s partial exemption from the realty transfer fee upon the recording of the deed for the conveyance of the property.

This question has been resolved by the New Jersey Tax Court. In *Terrell v. Director, Division of Taxation*, 22 N.J. Tax 297 (Tax Ct. 2005), the Court said:

“The statute [N.J.S.A. 46:15-10.1a(1)] specifically defines a ‘senior citizen’ as ‘any resident of this State of the age of 62 years or over.’ N.J.S.A. 46:15-5(f). A trust, not being a natural person, cannot be a senior citizen, and so it cannot claim the partial exemption from the realty transfer fee that is accorded to property owned, occupied, and sold by a senior citizen. In administering a transactional tax, the clerk has no duty to look beyond the grantor named in the deed. The taxpayer cannot later recharacterize the form in which they elected to hold the property. See *Zimmerer v. Clayton*, 7 N.J. Tax 15, 22 (Tax Ct. 1984).”

Accordingly the claim of partial exemption is not permitted in the situation described.

Sales and Use Tax

Artificial Fireplace Logs — Natural and artificial logs are treated as “fuel delivered to consumers...in bulk” within the meaning of N.J.S.A. 54:32B-8.7 and are exempt from sales tax. This provision was not changed by the Streamlined Sales and Use Tax legislation, P.L. 2005, c.126, which took effect October 1, 2005.

Lessor Certification (Form ST-40)

— As of October 1, 2005, Form ST-40 is no longer used for leases beginning on or after that date. Prior

to that date, the lessor (not the lessee) was legally obligated to pay the tax on a lease transaction, and lessors were not permitted to charge the lessee “sales tax.” The lessor provided the lessee with a completed Form ST-40, affirming that the tax would be paid directly to the Division of Taxation, or that an exemption was claimed. If the lessor did not pay the tax, the lessee could not be held responsible for the tax as long as the lessee had been given a completed Form ST-40. Under the provisions of the Streamlined Sales and Use Tax legislation (P.L. 2005, c.126) that took effect on October 1, 2005, the lessor is no longer the taxpayer but, rather, must collect sales tax from the lessee on both leases and rentals. Therefore, the ST-40 is no longer applicable.

Additional information on leases and rentals is available at: www.state.nj.us/treasury/taxation/pdf/ssutlease.pdf

Nonalcoholic Mixers — An inquiry was received regarding the taxability of nonalcoholic drink mixes. Pursuant to the changes enacted in the Streamlined Sales and Use Tax legislation (P.L. 2005, c.126) that took effect October 1, 2005, liquid nonalcoholic drink mixes that are sold for use in creating mixed drinks generally fall within the definition of taxable “soft drinks” as they contain natural or artificial sweeteners. However, if they contain milk or milk products (including soy, rice, or similar milk substitutes) or more than 50% vegetable or fruit juice by volume, they are excluded from the taxable soft drink definition and are considered exempt “food ingredients.” N.J.S.A. 54:32B-8.2. Powdered nonalcoholic drink mixes



tax briefs - from page 10

are exempt as "food and food ingredients."

Storage of Cargo Containers and Truck Chassis — The Division received an inquiry concerning the taxability of the storage of cargo containers and truck chassis at off-pier depots.

Sales tax is generally imposed on storage services; however, there is a specific exemption for certain storage services for the marine terminal industry. Sales of commercial ships, barges, and other 50-ton-burden vessels, including cargo containers and repairs to such, and machinery and equipment for use at a marine terminal facility in loading, unloading, and handling cargo, as well as *storage and other services rendered with respect to such loading, unloading, and handling of cargo at a marine terminal facility*, are exempt. Thus, storage services for cargo containers that are provided *at a marine terminal facility* are exempt. There is no provision that would exempt the storage of cargo containers at a location other than a marine terminal facility.

Trucks, tractors, trailers, and semi-trailers are not included within the exemption for the marine terminal industry described above, since they are not machinery or equipment used to load, unload, or handle cargo

at a marine terminal facility. Thus, storage services provided for trucks and trailers are subject to tax, regardless of where the storage occurs. However, an exemption applies to sales of commercial trucks, tractors, semi-trailers, and vehicles used in combination with a gross vehicle weight rating in excess of 26,000 pounds, or those engaged exclusively in interstate commerce. N.J.S.A. 54:32B-8.43. □

In Our Courts

Sales and Use Tax

Bulk Sale Notice – *GABGEO v. Division of Taxation, Division of Alcoholic Beverage Control, and Township of Colts Neck*, decided April 21, 2006; Tax Court Nos. 007640-2004 and 007676-2004.

George Mavrookas was the owner/chief executive of P. Phaneromeni Corp. (Phaneromeni), which owned and operated a restaurant in Colts Neck, New Jersey. The Division had filed numerous judgments in the form of certificates of debt against Phaneromeni for deficient and/or delinquent taxes. On September 17, 1996, the Division notified Phaneromeni that the Division had obtained a judgment against Phaneromeni, George Mavrookas, and fellow officers and partners for approximately \$195,356 of sales and use tax and corporation business tax

liabilities regarding tax years 1996 and prior. Between October 1996 and July 1997 there was correspondence between the Division and Mr. Giacomo Duva, the attorney for Phaneromeni, regarding payment of the liabilities. On July 7, 1997, Mr. Duva notified the Division that Phaneromeni had "contracted to sell the business, assets, liquor license, and real property to a bona fide buyer who presently has a loan commitment." The letter also stated that the buyer's lender had set a July 17, 1997, closing date, but that date could not be guaranteed. This letter did not disclose the identity of the buyer, a sales price, firm closing date, or if the purchaser would assume Phaneromeni's tax liabilities.

Plaintiff (GABGEO) purchased the assets and liquor license of Phaneromeni on July 18, 1997, for an unstated amount of money. GABGEO was incorporated on June 27, 1997, listing Peter Mavrookas (son of George Mavrookas of Phaneromeni) as the sole shareholder of GABGEO and Mr. Giacomo Duva as the registered agent. Although the purchase included the real property in which the business was located, the real estate was deeded in a separately recorded transaction on July 18, 1997, from George Mavrookas and his wife to Peter Mavrookas and his wife for \$1,800,000.

On September 2, 1997, Mr. Duva sent an attorney trust account check to the Division to pay off most of Phaneromeni's tax liabilities and indicated that GABGEO would assume responsibility for the remaining approximately \$20,000. The Division notified Phaneromeni that the judgments were satisfied and

New Jersey tax forms at your fingertips!
From your fax machine's phone, dial

609-826-4500

NJ TaxFax

NJ Tax Forms & Publications
24 Hours – 7 Days a Week



continued on page 12

in our courts - from page 11

warrants for satisfaction would be prepared and forwarded to the Superior Court.

Mr. Duva, acting as the attorney for GABGEO, delivered a Bulk Sale Notice to the Division on September 11, 1997, almost 60 days after the closing. Thereafter, the Division issued a conditional tax clearance certificate that allowed Phaneromeni to transfer the liquor license to GABGEO, and issued a Notice and Demand of Payment From Transferee to GABGEO in the amount of \$34,969. In the following months, Mr. Duva corresponded with the Division inquiring about the status of the clearance of the transfer of the liquor license. In a letter dated April 1, 1998, the Division informed Mr. Duva that GABGEO did not timely file its Bulk Sale Notice and therefore the Division could not inform the purchaser of the requirements to obtain a tax clearance certificate and did not perform an analysis of Phaneromeni's food and liquor purchases and gross receipts. Nonetheless, the letter stated that the Division would relinquish the escrow requirement and issue a conditional clearance certificate to allow the transfer of the liquor license with the caveat that upon completion of the current audit pertaining to Phaneromeni the Division would pursue collection activities against Phaneromeni and/or GABGEO.

In 1999, the Division issued a clearance certificate for the renewal of the liquor license indicating that there were no outstanding liabilities for sales through September 1997. Thereafter, the Division issued a tax clearance certificate for the transfer of the liquor license to GABGEO.

In a letter dated October 18, 1999, the Division issued a notice to Phaneromeni that it owed \$417,187 in sales tax and interest for tax years 1995 through 1997. On May 15, 2003, the Division notified GABGEO of their additional transferee liability of \$429,790 as a result of the audit of Phaneromeni.

At issue is whether GABGEO is responsible for the taxes, interest, and/or penalties of Phaneromeni as a result of the 1999 audit. In essence, N.J.S.A. 54:32B-22(c) requires that a purchaser in bulk of the business or business assets must notify the Division by registered mail at least 10 days prior to the sale or possession and include the price, terms, and conditions as well as acknowledge that the seller has informed the purchaser that the seller owes taxes or the purchaser will be personally liable for any taxes determined to be due from the seller.

The Court determined that the July 7, 1997, notification to the Division did not substantially comply

with N.J.S.A. 54:32B-22(c). Mr. Duva sent the notice on behalf of the seller, not the purchaser, the purchaser was not named, and the notification was not the form of notice required by the statute. The letter did not inform the Division whether the seller informed the purchaser of the outstanding taxes or that the purchaser would assume liability of any taxes owed. As to the September 11, 1997, notice, the Court found that it was a proper notice but was untimely to put the Division on notice as it was not provided at least 10 days before the July 18, 1997, sale as required by the statute. Therefore, the Division could not perform a quick bulk sales audit, address potential liabilities after an audit, and prescribe an escrow until after the sale closed.

The Court also questioned whether the transaction was a bona fide sale because the same attorney represented both the seller, whose principal was the father, and the

continued on page 13

Pay NJ Taxes Electronically

Electronic Check (E-Check)

www.state.nj.us/treasury/taxation

A sample E-Check form with the following fields: Pay to the order of (John Smith, Jane Smith, 123 Main Street, Trenton, NJ 08611), Date, Amount (\$1234.56), Routing number, and Account number. It also includes a 'SAMPLE' watermark and a note 'Do not include the check number'.

**Make a payment directly
from your bank account**

Credit Card*

1-800-2PAYTAX

www.officialpayments.com



* Fee of 2.5% of tax payment applies.

in our courts - from page 12

purchaser, whose principal was the son; the sales price of the business assets was miniscule in comparison to the separate price paid for the real estate; and there was no proof of the true values of the real estate and the business.

In addressing whether the Division should be equitably estopped from collecting the liabilities of Phaneromeni from GABGEO because of the months of negotiations prior to the sale between Mr. Duva and the Division regarding the amount of monies owed to secure transfer of the liquor license, the Court decided that the Division could only be estopped in this case if the bulk sales notification provisions were complied with or pursuant to a closing agreement. The Court found that the Division's April 1, 1998, letter was fair warning to GABGEO that an audit was in process and the Division reserved the right to collect against Phaneromeni and/or GABGEO.

In affirming the Division's assessment and holding GABGEO responsible for the tax liabilities of Phaneromeni, the Court reiterated that GABGEO did not comply strictly or substantially with the bulk sale notice provisions, GABGEO was on notice that it would be held responsible for Phaneromeni's audit liabilities, and there was no evidence presented at trial disputing the amount of the assessment.

Tax Separately Stated – *Great American Railway Co. v. Division of Taxation*, decided March 3, 2006; Tax Court No. 005006-2004.

Plaintiff operates a museum containing a doll collection, pipe organ, model railroads, as well as an out-

door railroad train. Customers paid an admission charge for entrance and received an admission ticket. The ticket stated only the admission price and did not provide the amount of sales tax.

The Division's auditor (Auditor) found that the gross receipts used to calculate sales tax plus 6% of that amount equaled plaintiff's gross receipts as recorded in a notebook by plaintiff's principal for the fourth quarter of 1997. Dividing the gross receipts by 1.06 produced taxable gross receipts. Plaintiff's accountant described this method of determining sales tax from the gross receipts as backing into the sales tax. The Auditor disagreed and determined that the entire admission price was taxable because the admission tickets did not separately state the tax as required by N.J.S.A. 54:32B-12(a) and the interpretive regulation. In other words, hypothetically, if the admission ticket price was \$10.60, plaintiff contends that \$10 is the gross receipt and \$0.60 is the sales tax. On the other hand, the auditor claims that the entire \$10.60 is the gross receipt and therefore subject to the 6% sales tax of \$0.636.

At trial, plaintiff's principal testified that the 6% sales tax was included in the admission price and that signs were posted indicating such for the four-year period at issue. On the other hand, the Auditor as well as an assistant testified that they did not see any posted signs relating to the sales tax.

In evaluating the testimony, the Court noted that this was not a case of concealment, plaintiff maintained adequate books and records, taxes were consistently reported and paid timely, and plaintiff's principal was a credible witness. The Court then

opined that a sign was posted during the entire audit period. The Auditor's testimony was discounted because the Division did not produce any evidence such as a photograph in support of its position. Furthermore, the Auditor's testimony was found to be due possibly to faulty recollection or a failure to observe the sign.

N.J.S.A. 54:32B-12(a) provides as follows:

Every person required to collect the tax shall collect the tax from the customer when collecting the price, service charge, amusement charge or rent to which it applies. If the customer is given any sales slip, invoice, receipt or other statement or memorandum of the price, service charge, amusement charge or rent paid or payable, the tax shall be stated, charged and shown separately on the first of such documents given to him. The tax shall be paid to the person required to collect it as trustee for and on account of the State.

The Court determined that plaintiff's sign "satisfied the purpose if not the letter of the statutory requirement" of N.J.S.A. 54:32B-12(a) even though sales tax was not separately shown on the admission tickets as required by the statute. The Court reasoned that the "purpose" of N.J.S.A. 54:32B-12(a) was to notify the customer of the amount of sales tax collected as well as to provide a basis for a sales tax refund where appropriate. Furthermore, the Court stated that additional sales tax was not retained by the plaintiff and that the Division sought to effectively impose additional sales tax on

continued on page 14

in our courts - from page 13

the sales tax reported and remitted. Alternatively, the Court opined that even if a sign was not posted, that additional sales tax was not due. “No provision of the sales tax statutes or regulations states that a failure to disclose separately the amount of sales tax being collected will automatically result in liability for payment of tax on the portion of the admission charge used to pay sales tax.” □

Tax Calendar

The following three calendars provide listings of filing and payment dates for tax year 2005 (January 1, 2005 – December 31, 2005) and tax year 2006 (January 1, 2006 – December 31, 2006) for businesses and individuals:

- **Chronological List of Filing Deadlines** — This calendar is for use by both businesses and individuals. If you are responsible for a return that is not listed in this calendar, please refer to the instructions that accompanied the return, or contact the Customer Service Center at 609-292-6400 for the appropriate filing deadline.

[2005](#) [2006](#)

- **Alphabetical Summary of Due Dates by Tax Type**

[2005](#) [2006](#)

- **Payment Dates for Weekly Payers** — An employer or other withholder of New Jersey gross income tax is designated a “weekly payer” if the amount of tax they withheld during the previous tax year was \$10,000 or more.

[2005](#) [2006](#) □



important phone numbers

Customer Service Ctr .. 609-292-6400
Automated Tax Info 1-800-323-4400
..... 609-826-4400

FAIR Rebate

Hotline 1-888-238-1233

Property Tax Reimbursement

Hotline 1-800-882-6597

Earned Income Tax Credit

Information 609-292-6400

NJ TaxFax 609-826-4500

Business Paperless Telefiling

System 1-877-829-2866

Speaker Programs 609-984-4101

Alcoholic Bev. Tax 609-984-4123

Corp. Liens, Mergers, Withdrawals

& Dissolutions 609-292-5323

Director's Office 609-292-5185

Inheritance Tax 609-292-5033

Local Property Tax 609-292-7221

Motor Fuels Tax

Refunds 609-292-7018

Public Utility Tax 609-633-2576